In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 14002 of 2006

Date of Decision: September 12, 2006

Jarnail Singh

…Petitioner

Versus

Union of India

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. S.K. Sharma, Advocate,
for the petitioner.

JUDGMENT

M.M. KUMAR, J.

This petition prays for issuance of direction to the respondent to permit the joining of the petitioner in service. The aforementioned relief has been founded on the correspondence between the petitioner the respondent, Annexures P-13 to P-22, whereby the petitioner had written to the respondent for his reinstatement in service in pursuance to a judgment and decree of the Civil Court, dated 29.1.1986 (P-2). It is admitted position that the petitioner had joined as a casual labourer and worked with the respondent from 15.4.1979 to 30.6.1979. Thereafter he successfully

passed the test on 2.8.1980. He worked as a Gateman at Dapar from 16.5.1980 to 28.2.1981. He was discharged in February 1981 by the Assistant Personnel Officer Northern Railway, New Delhi. He challenged the aforementioned order of discharge by filing a civil suit before the Civil Judge, Patiala, which was dismissed on 8.1.1985. The appeal filed by him was allowed, vide judgment and decree dated 29.1.1986 (Annexures P-2 and P-3). The aforementioned judgment and decree attained finality as the Civil Revision No. 1567 of 1986 was dismissed for non-prosecution on 18.8.1986. The petitioner entered into correspondence with the respondent authorities, which is Annexures P-13 to P-22 and eventually filed execution of the judgment and decree on 20.11.2000. The Execution Application was dismissed on 11.10.2002 by holding that the cause of action to the petitioner had arisen when the order attained finality on 18.8.1986 and the execution could have been filed within 12 years taking the cause of action from 18.11.1986, which in fact was filed after 14 years. The aforementioned order passed by the Executing Court was challenged before the Additional District Judge, Patiala, on 6.11.2003, which met the same fate and a Civil Revision No. 116 of 2004 was dismissed by this Court on 25.1.2005, specifically observing that the execution was hopelessly time barred.

The petitioner has also filed O.A. No./T.A. No. T-27-PB of 1987, which was also dismissed on 23.10.1987.

After hearing learned counsel at a considerable length we find that the present petition is a sheer misuse of the process of the Court. The right of the petitioner has been adjudicated upon by the judgment and decree dated 29.1.1986, which has attained finality.

Thereafter the execution filed to reap the fruits of the decree has been found to be hopelessly time barred as the remedy of execution was availed after more than 14 years. The order has been upheld by this court on 25.1.2005 (P-12).

If the instant petition is held to be maintainable then the necessary result would be that this Court can entertain a petition virtually challenging an order passed by this Court in Appellate/Revisional jurisdiction. In other words, it would amount to entertaining a petition against the order dated 25.1.2005 (P-12) and such a course is impermissible in law. The controversy has arisen before a Constitution Bench of 9 Judges of Hon'ble the Supreme Court in the case of **Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1**. The Bench by majority has rejected the argument that a judicial order passed by one Hon'ble Judge may be permitted to be challenged in a writ petition on the ground that it violated fundamental rights of the petitioner. The authoritative view of the Bench emerges from perusal of paras 38 and 39 and the relevant extracts reads as under:-

> " (38) The argument that the impugned order affects the fundamental rights of the petitioners under Art. 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or

wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Art. 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the Court and nothing more. If this basic and essential aspect of the judicial process is borne in mind it would be plain that the judicial verdict pronounced by Court in or in relation to the matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Art. 19(1).

(39) ……The order is not collateral in the sense that the jurisdiction of the Judge to pass that order can be challenged otherwise than by a proceeding in appeal. Just as an order passed by the Court on the merits of the dispute before it can be challenged only in appeal and cannot be said to contravene the fundamental rights of the litigants before the Court so could the impugned order be challenged in appeal under Art. 136 of the Constitution, but it cannot be said to affect the fundamental rights of the petitioners. The character of the judicial order remains the same whether it is passed

> in a matter directly in issue between the parties or is passed incidentally to make the adjudication of the dispute between the parties fair and effective. On this view of the matter, it seems to us that the whole attack against the impugned order based on the assumption that it infringes the petitioners' fundamental rights under Art. 19(1), must fail."

It is evident from the aforementioned authoritative pronouncement that no petition under Article 226 of the Constitution could be entertained against an order passed by this Court either in appellate jurisdiction or in revisional jurisdiction. It is also well settled that once the rights flowing from a judgment and decree has not been asserted by initiating execution proceedings within the period of limitation then such rights become imperfect rights, which cannot be enforced in a Court of law. Therefore, we are of the view that this petition is a sheer misuse of the process of the Court and does not deserve to be entertained. Accordingly, we dismiss the writ petition.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

September 12, 2006

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